

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WISCONSIN

KENNETH F. JAWOREK,

Plaintiff,

ALEX AZAR, UNITED STATES SECRETARY
OF THE DEPARTMENT OF
HEALTH AND HUMAN SERVICES, and
DEAN HEALTH PLAN, INCORPORATED,

Involuntary Plaintiffs,

Case No.

v.

MOHAVE TRANSPORTATION INSURANCE
COMPANY, SWIFT TRANSPORTATION
COMPANY OF ARIZONA, LLC,
ABC INSURANCE COMPANY
(An Unknown Insurance Company), and
JOHN F. DEGUIDE,

Defendants.

NOTICE OF REMOVAL

Defendants, Mohave Transportation Insurance Company, Swift Transportation Company of Arizona, LLC, and John F. DeGuide, by and through their counsel, hereby submit their Notice of Removal, pursuant to 28 U.S.C. §§ 1441 and 1446, and in support of the removal of this action from the Circuit Court of Dane County, Wisconsin, to the United States District Court for the Western District of Wisconsin, state as follows:

1. This action was initiated by the plaintiff, Kenneth F. Jaworek, in the Circuit Court of Dane County, Wisconsin, and is currently pending in said Court as Civil Action No. 2019-CV-002195.

2. This action was filed by the plaintiff on August 7, 2019. The defendant, Mohave Transportation Insurance Company, was served by a process server through its registered agent with a copy of the Summons and Complaint on September 27, 2019. The defendant, Swift Transportation Company of Arizona, LLC, was served by a process server through its registered agent with a copy of the Summons and Complaint on September 27, 2019. The defendant, John F. DeGuide, upon information and belief, was served by a process server with a copy of the Summons and Complaint on September 17, 2019. A copy of the Summons and Complaint is attached to this Notice as Exhibit A.

3. Plaintiff also named as involuntary plaintiffs, Alex Azar, United States Secretary of the Department of Health and Human Services, and Dean Health Plan, Incorporated, which are nominal parties with statutory subrogation interests. *Shaw v. Dow Brands, Inc.*, 994 F.2d 364, 369 (7th Cir. 1993). As nominal parties, Alex Azar, United States Secretary of the Department of Health and Human Services, and Dean Health Plan, Incorporated are not real parties in interest and do not need to consent to the removal of this action. *Vandervest v. Wisconsin Cent. Ltd.*, 936 F. Supp. 601, 605 (E.D. Wis. 1996).

4. Plaintiff also named ABC Insurance Company as an additional defendant. ABC Insurance Company is a party identified and/or sued under a

fictitious name and its citizenship shall be disregarded for purposes of removal pursuant to 28 U.S.C. § 1441(a).

5. On September 6, 2019, the involuntary plaintiff, Dean Health Plan, Incorporated, filed a Notice of Appearance and Claim and Cross-Claim. Copies of the Notice of Appearance and Claim and Cross-Claim are attached to this Notice as Exhibits B and C.

6. On September 11, 2019, the plaintiff filed an Answer to the Cross-Claim of Dean Health Plan, Incorporated. A copy of the Answer to Cross-Claim is attached to this Notice as Exhibit D.

7. On September 30, 2019, the defendants, Mohave Transportation Insurance Company, Swift Transportation Company of Arizona, LLC, and John F. DeGuide, filed their Notice of Appearance. A copy of the Notice of Appearance is attached to this Notice as Exhibit E.

8. Defendants have not been served with any process, pleadings or orders in this action, and no other process, pleadings or orders have been filed in this action other than the documents attached hereto as Exhibits A, B, C, D, and E.

9. This notice is timely filed pursuant to 28 U.S.C. § 1446(b)(3), in that thirty (30) days have not expired since September 27, 2019, the date on which the defendants, Mohave Transportation Insurance Company and Swift Transportation Company of Arizona, LLC, were each served with a copy of the Summons and Complaint.

10. The plaintiff, Kenneth F. Jaworek, is an adult citizen of Madison, Wisconsin. The defendant, Mohave Transportation Insurance Company, is an Arizona insurance corporation having its principal place of business in Phoenix, Arizona. The defendant, Swift Transportation Company of Arizona, LLC, is a Delaware limited liability company having its principal place of business in Phoenix, Arizona. Its sole member is Swift Transportation Co., LLC, which is a Delaware limited liability company having its principal place of business in Phoenix, Arizona. Its sole member is Knight-Swift Transportation Holdings, Inc., which is a Delaware corporation having its principal place of business in Phoenix, Arizona. The defendant, John F. DeGuide, is an adult citizen of Rochelle, Illinois.

11. Based upon the nature of the allegations in the Complaint, the matter in controversy in this action exceeds the sum of \$75,000, exclusive of interest and costs.

12. This court has original jurisdiction of this action pursuant to 28 U.S.C. § 1332 because the matter in controversy exceeds the sum of \$75,000, exclusive of interest and costs, and is between individuals, a corporation, and a limited liability company deemed citizens of different states.

WHEREFORE, defendants, Mohave Transportation Insurance Company, Swift Transportation Company of Arizona, LLC, and John F. DeGuide, respectfully request that this case be removed from the Dane County Circuit Court of Wisconsin to the United States District Court for the Western District of Wisconsin.

Dated: October 1, 2019.

s/Michael K. Roberts

Jay R. Starrett

State Bar No. 1011278

Michael K. Roberts

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Attorneys for Defendants, Mohave

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